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CONCORD, N.H.

Mr. Adolard E. Cote, Commissioner  
Department of Labor  
State House  
Concord, New Hampshire

Dear Mr. Cote:

This will acknowledge your letter of April 11, 1958 in which you inquire as to the extent of the lien which the State of New Hampshire has on a settlement of a claim for damages for personal injuries made by a State employee who had been injured in line of duty where the State employee had received payments from the State in the nature of sick leave benefits during the time he was unable to be at work.

You state that in this case the employee was injured through the fault of a third party while in the course of his employment. Instead of taking the compensation payments to which he would have been entitled under RSA 281:5 as a State employee he elected to utilize his sick leave benefits. This election is authorized by a Resolution adopted by the Governor and Council on April 15, 1953. The employee has now settled his claim with the third party and your question is to what extent, if any, the State has a lien on this settlement under the provisions of RSA 281:14 (Supp) for reimbursement for sick leave benefits paid and hospital and medical care furnished to the employee.

Rule 2. of the Governor and Council Resolution on April 15, 1953 provides that a State employee injured in the course of his employment may be allowed medical, hospital

COPY

Mr. Adolard E. Cote -- 2.

June 24, 1958

or other remedial care for a period not to exceed ninety days from date of injury.

Rule 3. of this Resolution gives the employee the option to utilize his sick leave benefits rather than to accept workmen's compensation payments and further provides that if he takes his sick leave he shall not receive any compensation over and above the benefits provided in Rule 2. until he has exhausted his sick leave.

Rule 4. of this Resolution provides that when an employee who has elected to utilize his sick leave benefits has exhausted the same he may receive compensation not in excess of two-thirds of his base pay and longevity, or the statutory maximum provided for by the Workmen's Compensation Act, whichever is the lesser.

RSA 281:14 (Supp) provides, in part, as follows:

"... provided, however, that the employer shall have a lien on the amount of damages recovered by the employee, . . . to the extent of the compensation, medical, hospital, or other remedial care [paid, or to be paid]."  
(Emphasis supplied)

RSA 281:14 (Supp) makes the employer's lien on a third party settlement applicable only to the extent of compensation paid or medical, hospital, or other remedial care furnished.

The aforesaid Resolution of the Governor and Council authorizes a State employee injured in the line of duty to elect to receive his sick leave benefits rather than compensation as provided by the Act. Since such sick leave benefits are not in the nature of compensation but constitute something to which the employee is entitled apart from the Compensation Act, it is our opinion that the lien in favor of the employer on third party settlements does not apply in case of moneys paid to the employee as sick leave benefits. However, Rule 3. of the aforesaid Resolution of the Governor and Council plainly indicates that medical, hospital or other remedial care furnished

COPY

June 24, 1958

Mr. Adolard E. Cote -- 3.

to the employee are considered to be in the nature of compensation payments and, accordingly, the State would have a lien on the third party settlement to recover reimbursement to the extent of these items. Furthermore, if an employee who has elected to utilize his sick leave benefits has exhausted the same and thereafter receives payments in the nature of compensation, as provided for in Rule 4. of the aforesaid Resolution, the State would have a lien on the third party settlement to the extent necessary to secure reimbursement of the amounts paid as compensation after exhaustion of the sick leave benefits.

Sincerely yours,

John J. Zimmerman  
Assistant Attorney General

JJZ:w